ITC Testimony Outline/Pre-Hearing Brief

Submitted by Enercorp LLC

Good morning and thank you for inviting me to address this topic.

I note from the esteemed panel of witnesses gathered, that the perspective I represent this morning will be somewhat unique, coming from a private business [indeed a small business] engaged in international development of utility grade wind projects. As a matter of introduction and background, I have personally been engaged in the business of private power plant development, project management and project financing in emerging markets, living and working abroad for more than 12 years. I have supported and/or closed large-scale transactions in places like China, the Philippines, and Pakistan.

In 1999 however, I turned my attention exclusively to creating Greenfield projects that marry clean energy technologies with conventional, proven project finance and private investment methodologies. The timing coincided with the solicitation of what was to become the world's largest wind generation independent power facilities (both in Morocco) Tangier 194 MW

in the north and Tarfaya 140 MW in the south. The projects have not been realized as yet, but represent a case study of the market impediments, both formal and informal, that private developer of renewable energy face in emerging markets.

My responsive to the your points of investigation will therefore draw upon the body of this particular experience with our most recent "bilateral Free Trade" partner, and the general context of effective use and implementation of private capital towards furthering the universal objectives of expanding clean energy production at the fastest possible rate.

Because any one element [such as resource assessment, renewable energy/green credits, construction contracting, free flow of development capital} of the topic could be addressed in detail that would consume all the time available at this hearing, I will seek to offer an overview and submit a more detailed post-hearing brief.

First, some key definitions:

A." Renewable energy industry"

To my mind, it is a substantial misnomer to characterize the totality of clean energy technologies and the services that surround them, as a singular industry under the banner of "renewable energy". Each technology is quite unique and specific in characteristic and application, and more often than not, in the corollary services and business models essential to their implementation. Utility grade wind, for example, when scaled up to contribute to base-load generation, conforms much more closely to conventional power development models, whereas, on the other end of the spectrum, solar photovoltaic might be at least as applicable to unit sales for building integrated products (such as roof tiles or windows) or village power, micro grids, etc than to any discussion of generating facilities. Both of these technologies, widely different in technical and commercial application, are predictable and reliable. Yet they are intermittent sources of power, which again separates them from biomass, hydrogen fuel cells and others. So it is important to understand from the outset of good trade policy design that there exist risks of unintended consequences if batching these all together as "environmentally friendly" for the sake of negotiation expediency.

B. "the Global market"

Here again, it is important to distinguish the sharply different characteristics that exist in two broadly different markets for renewable energy products, projects, and services. The first market is largely comprised of the more affluent OECD countries, which frequently pay a premium for "green" policies to achieve their desired social/environmental targets. The other market, far less affluent, but with far greater demand IS not "environmentally driven" but rather "economically driven". They cannot afford subsidies, or premiums to their price of power, and some view environmentalism as a "luxury", but they may desperately be seeking rural electrification and first light for their populations or alleviation of their external debt from hydrocarbon importation, for example. These two very distinct market drivers inevitably have created and continue to polarize two very distinct markets.

C. Most policy analyses I have encountered over the years largely emanates from academia, ngos, multilaterals, think tanks, etc. Too little has been demanded or contributed from the commercial community, and though that is changing, the seeming mistrust and underutilization of private sector interests in problem solving, I would contend has been amongst the greatest

failures to the shared goals of accelerating and increasing capital flows. If time permits, I like to offer some brief practical analysis of inherent impediments "from the trenches":

I. Markets lack consistent policy on renewable energy services and products

A. Both physical products (solar panels, wind turbine generators, etc) and services (sale of electricity, development services, resource assessment, Operations & Maintenance, construction contracting and subcontracting) have erratic and inconsistent tariffs, grid access, regulatory oversight, etc. Strong need for the USTR to advocate for uniform definitions and defined universal best practices as part of both the WTO and FTA negotiations.

B. US policy support also inconsistent and substantially ineffective to date. 1. Emanates from several disconnected and disparate sources: DOE, STATE, AID, MCC, OPIC, TDA all of which have failed to keep pace with the rate of industry's commercial advance and present economics.

2. US policy advisory, outreach "capacity building" consistently fails to make substantial impact and reach intended objectives, as funds and efforts and projects are expensed on parties that bear no responsibility, authority, or leverage for implementation. No consequence to aid recipients for chronic failures in market opening measures and policy reform and insufficient attention directed to results.

C. Multiple competing policies in the marketplace assure inconsistency and embed a status quo of closed and limited markets. Example GEF and MCC versus IFC and OPIC.

II. No resolution to problem without addressing fundamental structures, oversight, and management of host country utilities.

A. When they exist as state owned monopolies and parastatal corporations (as they do in mist cases) there is an absolute need for an equally strong independent regulatory authority to determine free and fair trade practices. Strong, independent oversight is fundamental to opening markets.

B. Substantial technology bias exists in most markets based on outmoded and nonfactual information regarding intermittent

generation sources. This hurts us most, as the world's largest investor in renewable technology r&D.

C. Private sector bias (against ownership and operation of generation assets) surfaces frequently in most markets, impeding implementation of FTA intents and macroeconomic policy

    i. Manifests itself with deliberate delay tactics; extraordinary measures and requests; and illegitimated leveraging that all run counter to existing agreements and intents

III. Unfair competition is rife in the market place amongst OECD vendors

A. ECA Provisions and Agreements of Tied Aid are regularly circumvented through the guise of charitable funding and environmental and social benefits.

B. Insider aid is arranged through innovative soft practices (free consulting for the host utility; Regional development aid that may "incidentally" be used for environmental infrastructure, etc)

C. Such practices preclude the possibility of an evolving market based system and fundamentally place renewable energy development in the same paradigm as all power infrastructure development 25 years ago.

D. Impeding the free market for clean energy technology goods and services works to the advantage of foreign competitors that are substantially more state supported than their US counterparts and are intimately involved in the distribution of Official Direct Assistance by their governments.

IV. Present FTA and WTO boilerplates substantially fail to address free, fair and competitive markets for energy services and renewable energy products and services in particular.

A. Negotiators normally have a legal rather than industry background and are detached from industry expertise and experience. Insufficient attention, informational exchange, and incorporations of the real market needs tend to fortify the status quo protections of state utilities. It is therefore essential that substantially more information flow amongst USTR and the respective renewable energy industries. These hearings and

your report will hopefully be a catalyst to an ongoing exchange in this rapidly evolving high growth area…and not perceived as a conclusive, static snapshot.

B. The unique project finance models of private securitizations and funding of renewable energy infrastructure do not fit neatly into existing recurrent provisions of trade negotiations, such as "procurement" or "investment" clauses, as it is actually a hybrid of the two and not clearly one or the other.

C. Similar dilemmas, effect particular elements of the industry: some countries classify solar panels as retail products; others tax them as components used for the sale of electricity.

D. US FCS and the respective embassies are also poorly equipped to manage advocacy as they struggle to grapple with legal provisions of accords that are outdated and non-applicable in a direct way.

    1. Embassies are inconsistent and subjective as the staff and Ambassadors turnover and put out changing messages that can be "waited out" by the host country in the course and duration of any given project.

2. Project sizes may be such that they are multiyear development transactions, with several sub transactions requiring policy consistency (construction, importation and clearance of equipment, spare parts importation and storage, foreign worker permits, capital exchange and repatriation, etc.)

V. Intermittent resources require open and free access to meteorological and other commonly available data that must be readily accessible to all parties under similar terms.

A. Investment is such data collection and resource assessments must be considered and protected as intellectual property by the party undertaking such investments.

B. Coordination by multilateral, bilateral, and US organizations of data collection and assessment should go hand in hand with improvements in policy environment.

VI. With respect to wind in particular, but other sources as well, few things are more important to market opening, than achieving equal (if not preferential) access to the transmission grid. There are of course commercial issues of more uniform and simplified and timely contract procedures leading to power delivery and permitting; as well as technical issues of load balancing and grid stabilization.

A. Fortunately, there are numerous effective policy examples in myriad jurisdictions incentivizing the market to perform commensurate with the available renewable resources. It should be the challenge of USTR to consider the range of best practices that best enable business entrants RATHER than public sector aid, which currently dominates market definition, to become the driving force in clean energy expansion.

I hope this overview has not cast too wide a net over too many topics, and I'd be pleased to expand upon any of these points with more detailed and specific examples both today and in our post hearing submission.

Again, thank you for this opportunity to address the commission.